FILE COPY

Office Supreme Court, U.S.
FILED
APR 14 1961
JAMES R. BROWNING, Clerk

In the

Supreme Court of the United States

October Term, 1961

No. 899

MELVIN W. BECK,

APPELLANT,

v.

STATE OF MAINE,

APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

JURISDICTIONAL STATEMENT

JEROME G. DAVIAU
A. RAYMOND ROGERS
50 Main Street
Waterville, Maine
Attorneys for Appellant

Waterville Printing Company, Boston, Mass. — Law Printers

TABLE OF CONTENTS

	Page
Jurisdictional Statement	1
Opinion Below	2
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement of the Case	5
The Questions Are Substantial	7
I. Where a State Statute is so Construed as to Render it Open to the Objection of Repugnancy to the Federal Constitution There is Presented a Federal Question Authorizing a Review	7
A. A construction which contradicts the letter of a statute should be carefully scrutinized lest the judgment of the Court be substituted for that of the legislature	8
B. Where words are plain and have a precise meaning, power to vary the ordinary meaning of statutory language must be exercised with care and only in extraordinary cases	9
Conclusion	9
Appendix A,— Opinion, State of Maine v. Melvin W. Beck	10
B,— Revised Statutes of Maine, 1954	22
Chapter 81	22
Chapter 83	32

TABLE OF CITATIONS

Cases

Ashcraft v. *Tennessee*, 322 U. S. 143	2
Commissioner of Internal Revenue v. *Drovers Journal Pub.*, 135 F.2d 276	9

	Page
Connally v. General Construction Company, 269 U. S. 385	6, 7
Crooks v. Harrelson, 282 U. S. 55	8
Dameron v. Brodhead, 345 U. S. 322	9
Hanover Fire Ins. Co. v. Carr, 272 U.S. 494	7
Helvering v. New York Trust Co., 292 U. S. 455	8
Herdon v. Georgia, 295 U. S. 441	2
Kovacs v. Cooper, 336 U. S. 77	6
Maine, State of, v. Melvin W. Beck, 156 Maine 403	2, 10
Royall, Ex parte, 117 U. S. 241	7
Siebold, Ex parte, 110 U. S. 371	7
Standard Oil Company of California v. Johnson, 316 U. S. 481	7
Ward & Gow v. Krinsky, 259 U. S. 503	7
Worcester County Nat. Bank of Worcester, Ex parte, 279 U. S. 347	7
Yu Cong Eng. v. Trinidad, 271 U. S. 500	6

Statutes

Revised Statutes of Maine, 1954:	
Chapter 10, Section 22	8
Chapter 81	2, 3, 4, 6, 8, 22
Chapter 81, Section 8	3, 24
Chapter 81, Section 9	3, 8, 25
Chapter 83	2, 3, 4, 32
28 U. S. C. Sec. 1257(2)	2

In the
Supreme Court of the United States

OCTOBER TERM, 1961

No.

MELVIN W. BECK,
APPELLANT,

v.

STATE OF MAINE,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Judicial Court of the State of Maine, entered on October 4, 1960, ordering that exceptions of the Appellant be overruled and judgment entered for the State, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Supreme Judicial Court of the State of Maine is reported at 156 Maine 403. A copy of the opinion is attached hereto as Appendix A.

Jurisdiction

This is a criminal complaint brought by the State of Maine against the Appellant, a duly registered engineer under Chapter 83 of the Revised Statutes of the State of Maine, 1954, for violation of Chapter 81 of the Revised Statutes of the State of Maine, 1954, which statute was in force at the time of said complaint. The Defendant and herein Appellant was found guilty of unlawfully displaying, by a sign, the title, "Architect," not being then and there duly registered by the State Board of Architects, as required by said Chapter 81. On February 17, 1960, judgment of guilty was entered against the Appellant, and a Bill of Exceptions was filed on the same date and allowed, and the extended exceptions were filed in the Supreme Judicial Court of the State of Maine, on March 16, 1960.

The statutory provision believed to confer on this Court jurisdiction of the appeal is 28 United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment on appeal in this case.

Herdon v. *Georgia*, 295 U.S. 441
Ashcraft v. *Tennessee*, 322 U.S. 143

Statutes Involved

It is alleged that Chapter 81 of the Revised Statutes of the State of Maine, 1954, is invalid. The text of Chapter

81 and pertinent sections of Chapter 83 of the Revised Statutes of the State of Maine, although the validity of Chapter 83 is not in question, are attached hereto as Appendix B.

Questions Presented

The following questions are presented by the appeal:

(1) Does said Chapter 81 of the Revised Statutes of Maine fail to define the practice of architecture with that degree of certainty required of statutes, though regulatory, under which criminal proceedings may be had, rendering the whole statute invalid?

(2) Does Chapter 81 of the Revised Statutes of Maine fail to set up its classifications within constitutional limitations and thus discriminate against this Appellant by permitting untrained and unqualified persons to do that which the statute prohibits the Appellant from doing, through a trained, professional, licensed engineer?

(3) Could the Supreme Judicial Court of the State of Maine, while ostensibly construing the language of Sections 8 and 9 of said Chapter 81, hold that the language meant the very opposite to what it plainly said without encroaching on the legislative function and consequently depriving the Appellant of his constitutional rights to due process in the prosecution of this criminal action against him?

(4) Since Chapters 81 and 83 of the Revised Statutes of Maine, 1954, define the practice of architecture and of engineering respectively, could the Supreme Judicial Court of Maine by its decision, judicially establish a definition of each profession at variance with the statute resulting in the invasion of the legislative

field, overruling the legislative definition, and thus rendering innocent conduct of the Appellant criminal without violation of the constitutional protection of due process?

(5) Could the Supreme Judicial Court of the State of Maine so construe Chapter 81 of the Revised Statutes of Maine, 1954, so as to find it lawful for the Appellant to practice architecture incidental to his engineering, but prohibit him from so advertising by a sign bearing the word, "Architect" without depriving the Appellant of the protection of the First Amendment to the Constitution of the United States?

(6) Could the Supreme Judicial Court of the State of Maine, not a trial tribunal, but an appellate one, during argument of counsel for Appellant and Appellee, accept what it terms "source material" from counsel for the State, over objections of counsel for Appellant, the contents of which it considered and adopted in part in its decision, thus permitting the authors of these articles to testify in absentia on moot subject matter, depriving the Appellant of the benefit and opportunity to cross-examine and rebut said evidence, without depriving the Appellant of his constitutional rights to due process?

(7) Since the Legislature of Maine in defining architecture and engineering in Chapters 81 and 83 states that the material difference between the two is the practice of "aesthetics," was it not, by Chapter 81, attempting to regulate "aesthetics" only, as to engineers licensed under Chapter 83, being art, and not subject to regulation within constitutional limitations?

These questions were necessarily decided in the affirmative and in favor of the constitutionality of Chapter 81 of the Revised Statutes of Maine, by the Supreme Judicial

Court of Maine in its decision in this case by affirming the finding of guilty against this Appellant. These questions were raised, (excepting questions 3, 4, and 6) as to their constitutionality, by motion and request for instructions to the jury and exceptions taken in the trial court as follows:

> "The Defendant takes exception to the following instructions of the Court to Jury:
>
> (1) The instructions do not cover the constitutional questions raised in the motion.
> (2) Does not limit itself to the real issue of this case.
> (3) To that part of the charge excluding from the jury consideration of the Defendant qualifying as an exception under the Statute.
> (4) To the charge in general to the extent that it is inconsistent with various exceptions already noted for the Defendant."

Questions 3 and 4 are found in the decision appealed from and 6 is based on the stipulation now of record.

The Appellant at page 64 of his brief, raises all of the federal questions herein, with the exceptions noted. The decision of the Supreme Judicial Court of Maine takes note of these questions and mentions their being raised by the Appellant on page 2 of its decision.

Statement of the Case

On December 3, 1959, Alonzo J. Harriman, Chairman of the State Board of Architecture for the State of Maine, made complaint in the Municipal Court in the City of Augusta against herein Appellant to the effect that, "On the 2nd day of December, 1959, at Waterville, in said

County of Kennebec, (the said Melvin W. Beck) used the title "Architect" not being then and there duly registered by the Maine State Board of Architects as required by Chapter 81 of the Revised Statutes of the State of Maine of 1954, by then and there erecting and maintaining an advertising sign on the building numbered 76 Main Street in said Waterville, displaying thereon the following words: "Melvin W. Beck, Engineer and Architect," against the peace of said state, and contrary to statute in such case made and provided.

The Appellant was duly arrested and charged with the crime of "unlawfully using the title 'Architect.'" On appeal to the Superior Court in and for the County of Kennebec, February term 1960, trial was had by jury which returned a verdict of guilty and the presiding justice sentenced the Appellant to pay a fine of three hundred dollars.

The Defendant appealed to the Supreme Judicial Court of the State of Maine on exceptions and to the adverse decision already noted, the appeal to the Supreme Court of the United States was filed.

It is a general principle of statutory law that a statute must be definite to be valid. If a statute either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application, it violates the first essential of due process of law.

YU CONG Eng. v. *Trinidad*, 271 U.S. 500

Connally v. *General Construction Company*, 269 U.S. 385

Kovacs v. *Cooper*, 336 U.S. 77
(Rehearing denied, 336 U.S. 921)

The general rule is that an unconstitutional statute having the form and name of law, is in reality no law but wholly void.

Ex parte Royall, 117 U.S. 241
Ex parte Siebold, 110 U.S. 371

The Questions Are Substantial

1. Where a State Statute is so Construed as to Render it Open to the Objection of Repugnancy to the Federal Constitution There is Presented a Federal Question Authorizing a Review.

Hanover Fire Ins. Co. v. *Carr*, 272 U.S. 494
Ward & Gow v. *Krinsky*, 259 U.S. 503

Where there is drawn in question the validity of a statute of a state, on the ground of it being repugnant to the Constitution of the United States and the decision of the State Court is in favor of its validity, there is a substantial question.

Ex parte Worcester County Nat. Bank of Worcester, 279 U.S. 347
Standard Oil Company of California v. *Johnson*, 316 U.S. 481

The statute may be declared void because of vagueness and indefiniteness without formally referring to any specific constitional provision.

Connally v. *General Construction Co.*, 269 U.S. 385

Section 9 of Chapter 81 in Revised Statutes of Maine, 1954, reads in part as follows:

> "Nothing in this chapter shall be construed to apply to . . . any person who is qualified under the laws to use the title "Professional Engineer," provided that such person may do such architectural work as is incidental to his engineering work, and any person registered hereunder may do such engineering work as is incidental to his architectural work."

Chapter 10, Section 22 in Revised Statutes of Maine, 1954, and as amended 1959, reads as follows:

> "I. Words and phrases shall be construed according to the common meaning of the language.
>
> XXVIII-A. Whenever in the Revised Statutes the word 'chapter' appears without definite reference, it refers to the chapter in which the word 'chapter' appears . . ."

The Supreme Judicial Court, in construing the language of Section 9, said that it did not exempt the Appellant. It said, "The act could hardly have been more oblique in expressing the legislative purpose than it is in the foregoing quotation."

A. A construction which contradicts the letter of a statute should be carefully scrutinized lest the judgment of the Court be substituted for that of the legislature.

Crooks v. *Harrelson*, 282 U.S. 55
Helvering v. *New York Trust Co.*, 292 U.S. 455

B. Where words are plain and have a precise meaning, power to vary the ordinary meaning of statutory language must be exercised with care and only in extraordinary cases.

Commission of Internal Revenue v. *Drivers Journal Pub.*, 135 F.2d 276
Dameron v. *Brodhead*, 345 U.S. 322

Are we to expect in the future that State Courts will be permitted to rewrite the plain and unambiguous language of a statute so as to ensnare the innocent in a mesh of guilt though only misdemeanors? The answer to this and the seven questions raised here will contribute greatly to the guidance of judicial regard for due process in the future, both in civil and criminal cases.

The elaboration of these questions and suggested answers should perhaps more properly be reserved for the brief. However, it is submitted that the questions presented are substantial and should be considered by the Supreme Court of the United States.

For these reasons, it is respectfully submitted that the judgment of the Court below should be reversed.

JEROME G. DAVIAU
A. RAYMOND ROGERS
50 Main Street
Waterville, Maine
Attorneys for Appellant

APPENDIX A

STATE OF MAINE

v.

MELVIN W. BECK

Rescript.
SULLIVAN, J.

On exceptions.

Respondent was prosecuted and found guilty by jury verdict upon a complaint for the offense of appropriating the title of architect by publicly erecting and maintaining upon the building housing his professional quarters a sign with the legend, "Melvin W. Beck, Engineer & Architect", when he had not been registered by the Maine State Board of Architects in compliance with the provisions of *R. S. (1954) c. 81.*

Respondent at the time of his imputed misdemeanor was a professional engineer registered in accordance with *R. S. c. 83.*

At the trial it was stipulated that the respondent who was not a registered architect owned the sign and that it had been displayed at his direction. The issues here are of law.

At the close of the evidence respondent unsuccessfully moved for a directed verdict upon the contentions that the State had failed to prove an offense under *R. S. c. 81* and that *R. S. c. 81* is unconstitutional in not excepting the respondent from its purview and bane. Respondent excepted.

It is obvious that the respondent had violated the man-

dates of *R. S. c. 81* as charged if he were not excepted by that statute. *State* v. *Huff*, 89 Me. 521.

R. S. c. 81, §9 ordains as follows:

> "Nothing in this chapter shall be construed to apply . . . to any person who is qualified under the law to use the title 'professional engineer' provided that such person may do such architectural work as is incidental to his engineering work . . ."

The act could hardly have been more oblique in expressing the legislative purpose than it is in the foregoing quotation. Yet a comparison with the complete text of *R. S. c. 81* manifests that the law forbids the assumption of the title of practicing architecture by one who is not qualified by state registration although he be a registered professional engineer. But the latter may, nevertheless, engage in architecture to the contained extent that such is incidental only to his engineering.

The respondent assails the constitutionality of *R. S. c. 81* upon plural grounds. His challenge must satisfy certain familiar norms.

> "The court is bound to assume that, in the passage of any law, the Legislature acted with full knowledge of all constitutional restrictions and intelligently, honestly and discriminatingly decided that they were acting within their constitutional limits and powers. That determination is not to be lightly set aside. It is not enough that the court be of the opinion that had the question been originally submitted to it for decision it might have held the contrary view. The question has been submitted in the first instance to the tribunal designated by the Constitution, the Legislature, and its decision is not to be overturned by the court

unless no room is left for rational doubt. All honest and reasonable doubts are to be solved in favor of the constitutionality of the act. This healthy doctrine is recognized as the settled policy of this court. . . ."
Laughlin v. *City of Portland*, 111 Me. 486, 489.

"The power of the judicial department of the government to prevent the enforcement of a legislative enactment, by declaring it unconstitutional and void, is attended with responsibilities so grave that its exercise is properly confined to statutes that are clearly and conclusively shown to be in conflict with the organic law. . . ."

State v. *Rogers*, 95 Me. 94, 98.

". . . The burden is upon him who claims that the act is unconstitutional to show its unconstitutionality. Warren v. Norwood, 138 Me. 180. . ."

Baxter v. *Waterville Sewerage District*, 146 Me. 211, 214.

". . . To invalidate a statute, unconstitutionality must be shown beyond a reasonable doubt. . . ."
Re: John M. Stanley, 133 Me. 91, 98.

The particulars of the controverting of the constitutionality of *R. S. c. 81* by the respondent may be summarized as follows:

The Legislature distinguishes no efficacious difference between professional engineering and architecture other than the aesthetics of the latter but aesthetics without more are not a proper or adequate object of police power. The act essays to control, by licensing requirements, the practice of art and such the Legislature can not do. The

statute is an arbitrary and unwarranted interference with the right of a citizen to pursue a lawful livelihood. More schooling or training is required by the Legislature for professional engineering than for architecture. An architect is basically an engineer with training in art. The respondent's qualifications as a professional engineer are at least the equivalent of an architect's and, notwithstanding, the Legislature discriminates against the former and prevents him from applying art to his profession. If an engineer by the statute is qualified to practice architecture as it may be "incidental to his engineering work," then the stricture against such engineer holding himself out as an architect has no reasonable relationship to the stability of the public health, welfare or safety. The definition of the practice of architecture in *R. S. c. 81, §8* is a hodge-podge of statutory criminality and so vague as to lack that certainty requisite in a criminal law. *R. S. c. 81, §9* violates the principle of equal application of the law in expecting employees who need have no special education or qualifications but who may design a building, provide specifications and supervise construction although the safety of a large segment of the public may be jeopardized. Respondent queries as to how a trained and qualified engineer might endanger the public by merely advertising that he performs architectural service while an employee without particular qualification may practice architecture without danger to the general public.

R. S. c. 81 as to architects and *R. S. c. 84* as to professional engineers are exercises of the police power.

State v. Old Tavern Farm, Inc., 133 Me. 468, 479.

The Legislature first regulated by licensing, engineering practice, *P. L. 1935, c. 189*, and subsequently, architecture, *P. L. 1945, c. 356*, and must be assumed to have

been cognizant of the provisions of *P. L. 1945, c. 189* (R. S. c. 83) when it adopted *P. L. 1945, c. 356* (R. S. c. 81). The Legislature must be considered as having entertained a consistent design and policy embracing both acts."

Palmer v. *Sumner*, 133 Me. 337, 344.

Professional engineering and architecture in the Legislative estimation are patently regarded as separate *species* of the engineering *genus* and such a judgment seems objectively valid. While categorically an engineer, the architect—without disparagement toward the professional engineer—is required to demonstrate that he possesses and utilizes a particular talent in his engineering, to wit, art or aesthetics, not only theoretically but practically, also, in coordination with basic engineering. *R. S. c. 81* prescribes that an engineer verify that he has such special talent to a sufficiently cultivated degree before he may publicly solicit patronage as an architect.

Professional engineering and architecture are not mutually separable and can never be completely disassociated. They are overlapping vocations. Nonetheless the Legislature in reason was justified in not regarding them as coextensive but as occasioning individualized attention for the public weal.

In the education of architects Massachusetts Institute of Technology informs us that:

> "The prerequisites for the study of architecture are sympathy for human institutions, aesthetic perception, and the ability to utilize effectively the methods of science in arriving at specific solutions of building problems. At bottom perhaps a special 'constructive' aptitude (important for various other careers as well) is, if not actually necessary, extremely desirable. The

course of study must provide in different ways for work along various lines—humanistic, artistic, and technical. . . . In this the elements of function, of structure, and of design in the layman's sense—that is form and expression—are combined and ultimately integrated. Like any other student, the student of architecture must proceed some distance analytically with the study of the separate aspects of his world before he can hope to reach a successful synthesis . . ." *Education of Architects and Planners*, (M.I.T.) p. 15.

In *Goldschlas v. Deegan*, 238 N. Y. S. 3, 4, the court said:

". . . But I think it may be safely said that, speaking of to-day, there are many elements of service in the preparation of plans for the construction of a building of whatever type, and the superintendence of construction, that may be more properly left to what we now know as an architect than to what we now know as an engineer. Certainly, an engineer is not to be presumed to be 'one who understands architecture'. . . ."

In *People* v. *Babcock*, 73 N. W. 2d 521, 526, (Mich.) it is said:

"While it is a fact that the definitions of architects and engineers are somewhat similar, yet there is a distinction. The services of an architect require the application of the principles of architective or architectural design, while the services of an engineer require the application of engineering principles."

We quote from *Rabinowitz* v. *Harwitz-Mints Furniture Co.*, 133 So. 498, 499, (La.):

"In the Encyclopedia Britannica we find the following with respect to the profession of engineering:

'Specialization has brought about separate grouping of those interested in mechanical, electrical, mining, etc. engineering. Underlying all groups is the work of the civil engineer, whose field particularly is that of structures. Foundations, simple or extremely complicated, are within his realm. He designs and supervises the construction of bridges and great buildings, tunnels, dams, reservoirs and acquaducts.' From the same work we excerpt the following definition of an architect: 'One who, skilled in the art of architecture designs buildings, determining the disposition of both their interior spaces and exterior masses, together with the structural embellishments of each, and generally supervises their erection.'"

In *McGill* v. *Carlos*, 81 N. E. 2d 726, 729, the Ohio Court said:

"Primarily, an architect is a person who plans, sketches and presents the complete details for the erection, enlargement, or alteration of a building or other structure for the use of the contractor or builder when expert knowledge and skill are required in such preparation. The practice of architecture may also include the supervision of construction under such plans and specifications . . ."

In *Architectural Research: Its Nature and Practice*, by Robert W. McLaughlin, FAIA, Director, School of Architecture, Princeton University, (1958), we find the following:

". . . Man's decision to live in groups in stable locations led to the building of towns and cities. The ways in

which men organize society determine the nature of our cities, and in turn the nature of our cities has a profound effect on the nature of society. An extreme example of this is the slum. *Architecture unrelated to the interests of society produces a slum as soon as it is built.* The study of human ecology, which is concerned with the relation of society to physical environment, and vice versa, holds keys to the understanding of the nature of our cities which can lead to wise planning. The methods and findings of the social scientists are applicable to this area. Urban research, which is architectural research in its widest aspects, leads to principles badly needed for understanding and conditioning the growth and deterioration of cities. . . .

History records man's constant effort to change and improve his environment. He has changed it through building, and improved it through architecture. *He has also damaged his environment through architecture—bad architecture.*" (Italics supplied)

We conclude that, while all architects may be engineers, all engineers are not architects. To restate these truths in one proposition, some engineers are architects. The Legislature confirmed these inferences when in 1945 it made requisite a special and classificational licensing of architects as such and enacted a separate statute for such a purpose in addition to the earlier engineering licensing act of 1935. While the respective functions of an engineer and those of an architect as recited in the two statutes superficially appear parallel and equivalent as predicated for each group they are designedly not so. Notably in the instance of architects studies, plans, specifications, etc., are coupled conjunctively with "a coordination of structural factors concerning the aesthetic." That element is absent

from the engineering law. And although the architect licensing act states that it regulates as to the performing of:

> ". . . any other service in connection with the designing or supervision of construction of buildings located within the state, regardless of whether such persons are performing any or all of these duties . . . ."

architecture connotes the fulfillment of such duties—which are fundamentally done very well by engineers—in an ulterior manner and with certain finesse not indispensable to the vocation of basic engineering.

It is self-evident from mere definition that the practice of both the professional engineer and the architect directly relate to the public health and welfare.

Architects are commonly engaged to project and supervise the erection of costly residences, schools, hospitals, factories, office and industrial buildings and to plan and contain urban and suburban development. Health, safety, utility, efficiency, stabilization of property values, sociology and psychology are only some of the integrants involved intimately. Banking quarters, commercial office suites, building lobbies, store merchandising salons and display atmospheres, motels, restaurants and hotels eloquently and universally attest the decisive importance in competitive business of architectural science, skill and taste. A synthesis of the utilitarian, the efficient, the economical, the healthful, the alluring and the blandished is often the difference between employment and unemployment, thriving commerce and a low standard of existence. Basic engineering no longer suffices to satisfy many demands of American health, wealth or prosperity.

R. S. c. 81 is necessary to assure the public in these times of expanding and mobile populations that one who publicly offers himself in the role of an architect may

evidence his competence by due registration with the State Board.

The classification of architects and that of engineers are:

> ". . . based upon an actual difference in the classes bearing some substantial relation to the public purpose sought to be accomplished by the discrimination in rights and burdens . . ."

York Harbor Village Corp. v. Libby, 126 Me. 537, 542.

Respondent censures the statute, *R. S. c. 81*, and contends that it is vitiated by included exceptions which exempt from the requirement of licensing certain kindred and occasional or gratuitous architectural—engineering functions which the Legislature did not deem to be seriously subversive of the objectives of the act. The Legislature judged that the exceptions contained reasonable deterrents or were innocuous. The issue is at most only narrowly debatable and as such is not a sufficient cause for invalidation. *Heron v. Denver*, (Colo.), 283, P. 2d 647, 650.

R. S. c. 81 and *R. S. c. 83* are very advantageous to the professions of architecture and of engineering. They do not discriminate against either vocation but do much to protect and promote each. A professional engineer with architectural competence need only undergo an examination to become registered as an architect.

Incidentally it may be observed that *R. S. c. 81, 9* permits a registered architect to perform any prerogatives of a professional engineer only as it may be "incidental to his architectural work."

The wording of the sign owned and displayed by the respondent was uncontroverted at the trial. Nor was there any occasion to resort to evidence to render its meaning or application clear.

"The construction of all *written instruments* belongs to the Court. It may become necessary to hear evidence of the surrounding circumstances that fill out the meaning of the words, as well as of any local or commercial meanings attached to particular words by usage; and the ascertaining of this is for the jury. But, subject to the amplification or the precision of the meaning thus ascertained, it is the duty of the jury to take the construction from the Court . . ."

Wigmore on Evidence, 3rd ed., Vol. IX, §2556, P. 522.

There was no error in the preclusion of testimony offered by the respondent to prove that he had done architectural work incidental to his engineering. Such evidence would have been extraneous to the issue posed by the State's complaint as to whether or not the respondent, unregistered, had used the title "architect."

"Some acts are in themselves indifferent and become criminal only when done with a particular intent. . . . Other acts, however, are sometimes made unlawful absolutely, without reference to any intent or other state of mind of the doer. In such cases no intent need be alleged or proved. The intent to do is sufficient and that can be inferred from the doing. The acts prohibited by this statute are of the latter class. They are prohibited absolutely. Having intentionally committed them, though innocent of any turpitude, the appellant has violated the statute. State v. Goodenow, 65 Maine, 30."

State v. *Huff*, 89 Me. 521, 523.

6. Respondent excepts to inconsistent statements in the Court's instruction to the jury. Such error as there was favored the respondent and is not exceptionable. *State* v. *Siddall*, 125 Me. 463, 464.

Exceptions overruled.
Judgment for the State.

Webber, J., did not sit.

APPENDIX B

REVISED STATUTES OF MAINE, 1954,

CHAPTER 81

REGISTRATION OF ARCHITECTS

Sec. 1. Board of registration for architects—A state board of registration for architects, as heretofore created and hereinafter in this chapter called the "board," shall administer the provisions of this chapter and may be cited as the "Maine State Board of Architects."

The board shall be composed of 3 practicing architects, or 2 practicing architects and 1 professor of architecture, who shall be appointed by the governor with the advice and consent of the council, to serve for 3 years and until their successors are duly appointed and qualified. Each member of the board shall receive a certificate of his appointment from the governor and shall serve without pay. (1945, c. 356; 1949, c. 242, 1)

Sec. 2 Qualifications for members—Each member of the board shall be a citizen of the United States, a resident of this state and an architect of recognized standing who shall have been engaged in the independent practice of architecture for at least 10 years previous to his appointment, with the exception of one member who may be the head of a department of architecture in any college or university of this state and whose combined experience in practice and teaching shall not be less than 10 years, at least 2 of which shall have been in the active practice of architecture as a profession. Members of organized groups of architects shall not be elected to the board in greater proportion than the number of their members is to the number of architects in the state. (1945, c. 356 1)

Sec. 3. Organization; meetings; quorum; seal—The board shall hold at least 2 meetings each year for the purpose of examining candidates for registration. Special meetings shall be held at such times as the regularly adopted rules and regulations of the board shall provide.

Two members of the board shall constitute a quorum but no action may be taken without at least 2 votes in accord. The board shall annually elect a chairman and a secretary. The secretary may or may not be a member of the board. The board shall adopt and have an official seal. (1945, c. 356 1)

Sec. 4. Powers and duties—The board shall in accordance with the spirit and intent of the law make such rules and regulations as may be desirable or necessary for the performance of its duties and for carrying out the purposes of this chapter.

In carrying into effect the provisions of this chapter the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance and may require the production of books, papers and documents in any case involving revocation or registration. The chairman or the secretary may administer oaths or affirmations to witnesses appearing before the board. If any persons shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers or other documents, the board may present its petition to any justice of the superior or supreme courts, setting forth the facts and thereupon such court, after notice and hearing, may issue its subpoena to such person, requiring his attendance before the court and thereto testify or to produce books, papers or documents as may be deemed necessary and pertinent. Any person failing or refusing to obey the subpoena or order of the said court may be proceeded against in the same manner as for refusal to obey any other subpoena.

The board, or any committee thereof, shall be entitled to the services of the attorney general and the services of the prosecuting attorney for the county in which enforcement is required; and the board shall also have the power to employ legal advice and such other assistance as may be deemed necessary for the proper conduct of its affairs, the expense of such assistance to be defrayed by the revenues provided by this chapter. (1945, c. 356 1)

Sec. 5. Removal of members; vacancies—The governor, with the advice and consent of the council, may by due process of law remove any member of the board for misconduct, incompetency, neglect of duty or for any malfeasance in office. Vacancies in the membership of the board shall be immediately filled for the unexpired term.

If the governor fails to name a successor for an unexpired term or to fill a vacancy within 2 months after the term of a member has expired or a vacancy occurred, then the remaining members of the board shall be empowered to, and may, fill the vacancy by giving the governor 10 days' written notice that they are about to take such action, and at the expiration of the 10 days' notice, unless the governor shall within that period make an appointment, may elect an architect having the necessary qualifications to serve out the vacant term. (1945, c. 356, 1)

Sec. 6. Records—The board shall keep a record of its proceedings and a register of all applications for registration which shall show all necessary details as may be determined by the board. (1945, c. 356, 1)

Sec. 7. Reports—Not later than August 1st of each year the board shall submit to the governor a report of its transactions of the preceding fiscal year ending June 30th, and shall also transmit to him a complete statement of all receipts and expenditures of the board, attested by affidavits of its chairman and its secretary. (1945, c. 356 1)

Sec. 8. Unregistered persons forbidden to practice archi-

tecture—In order to safeguard life, health and property, no person shall practice architecture or hold himself out to practice architecture within the state, or use the title "architect" or call himself an architect or sign drawings or specifications as an architect, unless he shall be duly registered by the board in the manner herein provided and shall thereafter comply with the provisions of this chapter.

As used in this chapter, the practice of architecture shall consist of rendering or offering to render service to clients by consultations, investigations, preliminary studies, plans, specifications, contract documents and a coordination of structural factors concerning the aesthetic or structural design and supervision of construction of buildings or any other service in connection with the designing or supervision of construction of buildings located within the state, regardless of whether such persons are performing one or all of these duties, or whether they are performed in person or as the directing head of an office or organization performing them. (1949, c. 242 2 1953, c. 405, 1)

Sec. 9 Exceptions—Nothing in this chapter shall be construed to apply to the supervision of construction of residential property or to landscape architects and marine or naval architects when acting within the scope of their profession or occupation, or to officers or employees of the government of the United States while engaged within the state in the practice of architecture for said government, or to any person while in the regular employment of a public utility, or to any person who is qualified under the law to use the title "professional engineer," provided that such person may do such architectural work as is incidental to his engineering work and any person registered hereunder may do such engineering work as is incidental to his architectural work.

Nothing in this chapter shall be construed to prevent any person from making a set of drawings or specifica-

tions for, or supervising the construction of, the occasional or incidental erection or construction of:

I. Any building or enlargement or alteration thereof intended for occupancy by himself or any person, association or corporation regularly employing him;

II. Any building or enlargement or alteration thereof which is to be used for farm purposes;

III. Any single family residence of any size which is to be used by such person as his home;

IV. Any remodeling or alteration of existing buildings not involving structural changes;

provided such person shall not receive any compensation for making such drawings and specifications. (1945, c. 356; 1953, c. 405 2)

Sec. 10. Qualifications

1. To be qualified for admission to the examination to practice architecture in this state an applicant shall be at least 25 years of age, a graduate of an approved 4 year high school including not less than 1 year in the basic science of chemistry and physics and 3 years of mathematics, or equivalent training, and after completion thereof he must have had:

A. Satisfactory training in a school or college of architecture approved by the board, with graduation therefrom as evidenced by a diploma setting forth a satisfactory degree, and 3 years of practical experience in the office of an experienced architect or architects engaged in the practice of architecture as a profession; or

B. Nine years of practical experience in the office of an experienced architect or architects engaged in the practice of architecture as a profession; or

C. Training fully equivalent to that required in paragraphs A or B.

II. No corporation as such shall be registered to practice architecture in this state, but it shall be lawful for a corporation to practice architecture providing the chief executive officer of such corporation shall be a registered architect and all drawings and plans and specifications and supervision of construction or alterations of buildings or projects by such corporation shall be under the personal direction of such registered architect. (1945, c. 356, 1)

Sec. 11. Examinations.—The board shall have the power to make all necessary rules and regulations governing the time, place and method of giving examinations to all applicants who desire to use the word "architect" and to engage in performing the functions of an architect, and of the grading of such examinations; and said board shall have the power to provide a reasonable division into classes of the various applicants and the examination to be taken in each class, said examinations to consist of such technical and professional subjects and oral questioning as the board may from time to time prescribe. The rules for the examination shall follow the recommendations of the board. (1945, c. 356, 1)

Sec. 12. Registration without examination.

I. Certificates of registration may, in the discretion of the board, be issued to persons who have passed a standard National Council of Architectural Registrations Boards' examination upon certification thereto by the National Council of Architectural Registration Boards, and the further evidence of continued honorable professional conduct after the passing of such examination.

II. Certificates of registration may, at the discretion of the board, be issued to persons who hold or have held certificate of registration from other states, providing the requirements of such certificate of registration are deemed the equivalent of requirements for registration in this state by examination, and provided the applicant submit such other evidence of his ability as may be required by the board.

III. For nonresident architects, the board may, upon application therefor, and the payment of a fee equivalent to that required for a regular written examination and certificate, issue a certificate of registration to any such applicant who holds an unexpired certificate of registration issued to him by any state or territory or possession of the United States or any country, provided that the requirements of the registration of architects under which said certificate of registration was issued do not contravene the provisions of this chapter and are deemed the equivalent of requirements for registration in this state by examination, and provided the applicant submit such other evidence of his ability as may be required by the board. (1954, c. 356, 1)

Sec. 13. Certificates—The board shall issue a certificate of registration, upon payment of the fee provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. Certificates shall bear the signatures of the chairman and secretary, and the seal of the board.

Issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered architect while said certificate remains unexpired and unrevoked; and said certificate shall be synonymous with registration.

with the full meaning and effect of a license to practice architecture.

Certificates of registration shall expire on the last day of June of each year and shall become invalid on that date unless renewed. Renewal may be affected at any time during the month of June by payment of the renewal fee as herein provided.

In the case of a revoked, lapsed or suspended registration, the board shall have the power to compel the return of the certificate within 1 month from the date of its expiration, provided there is no reissue of said certificate. (1945, c. 356, 1)

Sec. 14. Seal—Each registrant shall upon registration obtain a seal of such design as the board shall authorize and direct. Plans and specifications prepared by or under the direct supervision of a registered architect shall be stamped with said seal during the life of the registrant's certificate, and it shall be unlawful for anyone to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued. (1945, c. 356, 1)

Sec. 15. Penalties—Any person who shall violate any provision of this chapter shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 3 months, or both such fine and imprisonment. (1945, c. 356, 1)

Sec. 16. Fees—For the purpose of defraying the expenses of the board, as herein provided, and as required for carrying out the provisions of this chapter, the following fees and penalties shall be paid:

1. For an application for examination and registration an amount to be fixed by the board which shall at no time exceed $25.

II. For a certificate of registration, or by transfer of registration from another state or country, an amount to be fixed by the board which shall at no time exceed the sum of $25.

III. For the annual renewal of a registration certificate, an amount to be fixed by the board which shall at no time exceed the sum of $25.

IV. For the restoration of a lapsed, suspended or revoked certificate, an amount to be fixed by the board which at no time shall exceed the sum of $25.

All fees must accompany applications and no part of these fees shall be refunded, except such part as may be provided under the rules of the board to be refunded when no certificate is issued. (1945, c. 356, 1)

Sec. 17. Revocation of certificate; suspension—The board shall have the power to revoke the registration of any architect upon proof of violation of any of the provisions of this chapter or of violation of any of such rules and regulations as the board may establish to govern the practice of architecture in this state.

In the event that any person registered as an architect by the board accepts regular employment by a city, town, country or the state or any department thereof, and such employment places him in a position where he is empowered to rule upon the services of other architects or to make selections of architects for the governmental body by whom he is employed, his license to practice architecture shall be suspended during the term of such employment without prejudice to him. (1945, c. 356, 1. 1949, c. 242, 3)

Sec. 18. Hearings—Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any registrant. Such charges shall be sworn to by the person making them and shall be filed with the secretary of the board.

All charges, deemed worthy of consideration by the board, shall be heard by the board within 3 months after the date upon which they are received by the secretary.

The time and place of said hearing shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on the registrant accused or mailed to the registrant at his last known address at least 30 days before the date fixed for the hearing.

At any hearing the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses and to produce evidence and witnesses in his own defense.

If after such hearing 2 or more members of the board vote in favor of finding the accused guilty, the board shall revoke the certificate of registration of such architect.

The board, for reasons it may deem sufficient, may reissue a certificate of registration to any person whose certificate has lapsed or has been suspended or revoked, provided no charges of violation of this chapter are pending in any court of record of this state and that the board is unanimous in its decision; except in the case where charges have been maintained and the registrant has been proven guilty, in which case no certificate shall be reissued during 12 months from the date of revocation of the previous certificate. (1945, c. 356, 1)

Sec. 19. Enforcement.—It shall be the duty of all duly constituted officers of the law of this state and all political subdivisions thereof to enforce the provisions of this chapter and to prosecute any persons violating the provisions thereof. (1945, c. 356, 1)

Sec. 20. Saving clause.—This chapter shall not be construed to affect or prevent the practice of any other legally recognized profession. (1945, c. 356 1)

CHAPTER 83

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

Sec. 2. Definitions—As used in this chapter, unless a different meaning clearly appears from the context:

I. The term "professional egineer" shall mean a person who, by reason of his knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined.

II. The term "practice of professional engineering" shall be held to mean any professional service, such as consultation, investigation, evaluation, planning, design or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and data.

III. The term "board" shall mean the state board of registration for professional engineers provided for by this chapter.

IV. The term "engineer-in-training" shall mean a person who has been certified as such by the board and whose name has been entered in the register of engineer-in-training. (1953, c. 345, 1) (R.S. c. 74 2 1953, c. 345, 1)

Sec. 12. General requirements for registration The following shall be considered as minimum evidence satis-

factory to the board that the applicant is qualified for registration as a professional engineer, to wit:

I. Graduation from an approved course in engineering of 4 years or more in a school or college approved by the board as of satisfactory standing; and a specific record of an additional 4 years or more of active practice in engineering work and indicating that the applicant is competent to be placed in responsible charge of such work; or (1945, c. 431)

II. Successfully passing a written or written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved 4 year engineering course and a specific record of 8 years or more of active practice in engineering work and indicating that the applicant is competent to be placed in responsible charge of such work. (1945, c. 431)

III. Certification as an engineer-in-training followed by 4 years or more of active practice in engineering work indicating that the applicant is competent to be placed in responsible charge of such work, and at the option of the board, the passage of a written examination as prescribed by the board in the practical phases of engineering in the classification of engineering in which the applicant is attempting to qualify; or (1953, c. 345 5)

IV. Evidence acceptable to the board that an applicant is qualified for registration as a professional engineer by a specific record of 15 years or more of lawful active practice in engineering work of character satisfactory to the board and indicating that the applicant is eminently qualified to design or to supervise construction of engineering work and has had responsible charge of important engineering work for at least 5

years and further provided applicant is not less than 35 years of age. Responsible charge of engineering teaching may be construed as responsible charge of engineering work. (1953, c. 345 5) No person shall be eligible for registration as a professional engineer who in the opinion of the board is not of good character and reputation.

Each year of engineering teaching, or postgraduate or research work in an engineering school or college approved by the board as of satisfactory standing, may be considered as a year of active practice in engineering work, except that 2 years of engineering work, other than engineering teaching or postgraduate or research work in such engineering school or college and of a character satisfactory to the board, shall be required.

The satisfactory completion of each year of an approved course in engineering in a school or college approved by the board as of satisfactory standing, without graduation, shall be considered as equivalent to a year of active practice. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to 2 years of active practice. The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be active practice in engineering work.

The board shall issue certificates of registration only to those applicants who meet the requirements of this section or of section 21.

Any person having the necessary qualifications prescribed in this chapter to entitle him to registration shall be eligible for such registration though he may not be practicing his profession at the time of making his application.

(R.S. c. 74, 12. 1945, c. 43, 1; c. 293, T3; c. 378, 63. 1953, c. 345, 5, 6.)

Sec. 18. Firms, partnerships, corporations and joint stock associations—A firm, copartnership, corporation or joint stock association may engage in the practice of professional engineering in this state, provided only such practice is carried on by profession engineers registered in this state. (R.S. c. 74, 17)

ILE COPY

Office Supreme Court, U.S.
FILED
MAY 12 1961
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 899

MELVIN W. BECK

APPELLANT

vs.

STATE OF MAINE

APPELLEE

ON APPEAL FROM

THE SUPREME JUDICIAL COURT

OF THE STATE OF MAINE

MOTION TO DISMISS

Of Counsel

JON A. LUND
Kennebec County Attorney
Augusta, Maine

CURTIS WEBBER
LINNELL AND CHOATE
33 Court Street
Auburn, Maine

FRANK E. HANCOCK
Attorney General of
the State of Maine
State House
Augusta, Maine
Attorney for Appellee

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. _____

MELVIN W. BECK

APPELLANT,

vs.

STATE OF MAINE

APPELLEE.

ON APPEAL FROM

THE SUPREME JUDICIAL COURT

OF THE STATE OF MAINE

MOTION TO DISMISS

Appellee ~~Appellant~~ in the above entitled case moves to dismiss on the grounds that the questions presented are so unsubstantial as not to warrant further argument.

ARGUMENT

I. *The Statutory Prohibition on use of the Title "Architect" by Unlicensed Persons is not Constitutionally Vague.*

Appellant challenges that portion of the Maine statute requiring registration of architects which defines the practice of architecture asserting that it is unconstitutionally vague. Such challenge widely misses the mark, however, since no issue as to the clarity of the statutory definition of architecture is involved in the decision of this case.

Appellant's conviction below was on the narrow ground that he advertised himself as an architect in violation of the statutory requirement that "no person shall . . . use the title 'architect' . . . unless he shall be duly registered by the board." Me. Rev. Stat. c. 81, sec. 8 (1954). Appellant was admittedly not so registered. This quoted language clearly informed him that such conduct was forbidden.

Had appellant been convicted of practicing architecture in defiance of the statute, he would then have had standing to assert that the statutory language defining the practice of architecture failed to spell out clearly what types of conduct are forbidden. Instead he was merely charged with improperly using the title "architect."

II. *The Exceptions to the Statutory Licensing Requirement Are Consistent with its General Legislative Purpose.*

Appellant attacks the statute because it excepts from its licensing provisions certain classes of persons, primarily those who perform services related to architecture without charge or who perform such services for their own employers. Presumably his argument is that the difference in classes has no appropriate relation to the object of the legislation.

Ample grounds exist, however, to support an opposite conclusion. The legislature could reasonably have concluded that its purpose of assuring to the public the competence of persons advertising themselves as architects would not be subverted by permitting non-architects to provide gratuitous assistance to their neighbors in their home building projects or perform incidental architectural or construction work for their own employers. In neither case is the recipient of these services misled as to the knowledge and skill of the person performing them. Furthermore, this court has heretofore acknowledged that the legislature may constitutionally distinguish between those who act for hire and those who do not. *Railway Express Agency v. People of New York*, 336 U. S. 106, 115-116 (1949) (concurring opinion of Mr. Justice Jackson).

III. *The Supreme Court Will Not Review A State Court's Interpretation of A State Statute.*

In his third, fourth, and fifth questions presented, appellant declares himself aggrieved by the Maine Supreme Court's interpretation of the statute under which he was convicted. In numerous decisions this court has held that it will not review state court determinations of the proper meaning to be given to state law. See e.g. *Williams v. Kaiser*, 323 U. S. 471 (1944); *Smith v. O'Grady*, 312 U. S. 329 (1940).

IV. *Appellant's Rights Were Not Prejudiced by Citation in the State's Brief of Publications Relating to the Education of Architects.*

In his sixth question presented, appellant complains that the State obtained a prejudicial advantage by introducing evidential material at the time of the oral argument in the court below. The "source materials" referred to by appellant were merely three articles or brochures which had been quoted in the State's brief. These documents were submitted to the court, as a matter of its own convenience, to assist it in verifying the quotations used.

Appellant's objection that these materials contained matters of fact which he had no opportunity to rebut is without merit. Whether the differences between architects and engineers described in the quotations are beyond debate is not at issue. It is enough to show that responsible opinion *exists* that there are such differences which the legislature could reasonably have adopted as a basis for its licensing statute. *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 594 (1939). For this purpose, use of the materials in question was clearly appropriate.

In any event, the acceptance of such materials and the weight to be given them would appear to be matters within the sound discretion of the state court. Appeals from such decisions clearly do not present a substantial federal question.

V. *The Statutory Restriction on the Use of the Title "Architect" Does Not Unconstitutionally Discriminate Against Professional Engineers.*

The court below stated its grounds for upholding the constitutionality of the statutory requirement that unlicensed persons may not use the title "architect" in the following terms:

> (The statute) is necessary to assure the public in these times of expanding and mobile populations that one who publicly offers himself in the role of an architect may evidence his competence by due registration with the State Board. Appellant's Jurisdictional Statement, App. A., pp. 18-19.

Stated another way — the legislature's police power to protect the general welfare includes power to pass laws designed to prevent fraud and financial loss to individuals from dealings with incompetent persons posing as specialists, and to create public confidence in the

qualifications of men holding themselves out as members of recognized professions or other occupations requiring high degrees of knowledge and skill. (A discussion of the factors which have given rise to an increasing number of such licensing laws in modern times may be found in an annotation in 34 A.L.R.2d at 1326.)

This court has recognized the constitutionality of such police power regulation. See e.g. *Hall v. Geiger-Jones Co.*, 242 U. S. 539 (1917) (licensing of dealers in securities).

The Maine Court carefully considered the professional requirements of both architects and engineers and held that the legislature could reasonably have concluded that there were significant differences in the two warranting separate classification. Thus the court correctly applied the rule that no unequal protection of the law exists where the distinction is based upon an actual difference in the classes bearing a substantial relation to the purpose which the statute was designed to accomplish. *Railway Express Agency v. People of New York*, 336 U. S. 106 (1949); *New York Rapid Transit Corp. v. City of New York*, 303 U. S. 573 (1938).

It is significant to note that in three state court cases in which the constitutionality of the separate classification of architects and engineers was at issue, the legislation was upheld. See *Heron v. City of Denver*, 131 Colo. 501, 283 P.2d 647 (1955); *State v. Babcock*, 343 Mich. 671, 73 N.W.2d 321 (1955); *Goldschlag v. Deegan* 135 Misc. 535, 238 N.Y.S. 3 (1929). In the *Goldschlag* case, this court denied certiorari, 282 U. S. 876 (1930), indicating that, under criteria similar to those to be applied here, no issue meriting review was presented.

CONCLUSION

For the reasons given, appellee submits that no substantial federal question is raised by appellant, and that the motion to dismiss should be granted.

Respectfully submitted,

FRANK E. HANCOCK
Attorney General
of the State of Maine
Attorney for Appellee

Of Counsel
JON A. LUND
Kennebec County Attorney
Augusta, Maine

G. CURTIS WEBBER
LINNELL AND CHOATE
33 Court Street
Auburn, Maine

[redacted] FILE COPY

Office-Supreme Court, U.S.
FILED
JUN 7 1961
JAMES R. BROWNING, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1961

No. 899

MELVIN W. BECK,
APPELLANT,

v

STATE OF MAINE,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

APPELLANT'S BRIEF ON APPELLEES MOTION TO DISMISS APPEAL

JEROME G. DAVIAU
A. RAYMOND ROGERS
50 Main Street
Waterville, Maine
Attorneys for Appellant

Atkins Printing Service, Waterville, Maine

TABLE OF CITATIONS

Revised Statutes of Maine, Chapter 81 and 83

Revised Statutes of Maine, Chapter 10 sec. 22

Mobile Jackson vs Miss., 210 US 187

Hanover Fire Ins. vs Carr, 272 US 494

Thornhill vs State of Alabama, 310 US 88

16 CJS 258 sec. 84

16 CJS 84 sec. 19

In the

Supreme Court of the United States

OCTOBER TERM, 1961

No.

MELVIN W. BECK,
APPELLANT,

v

STATE OF MAINE,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

APPELLANT'S BRIEF ON
APPELLEES MOTION TO DISMISS
APPEAL

ANSWER TO
STATE'S ARGUMENT NUMBER I

In this argument the state tries to narrow the issue to the limited question of the use of the title "Architect" by the appellant. The state advanced this argument before the Supreme Judicial Court of Maine and the latter, inferentially, disregarded it by considering the constitutional questions raised by the appellant. This view seems to be predicated on the theory that the state may fine and imprison dozens of respondents under an ad-

mittedly unconstitutional statute, if only the issues can skillfully be kept "narrow" enough so that the respondents may not be able to procedurally question the constitutionality of the statute. The state has not, before the state court nor before this court, cited any law to sustain it in this view. We say that this is not the law of the land, nor a proper attitude for a state to take.

The correct rule is stated at 16 CJS 258, section 84, which reads in part as follows:

> "An accused affected by one portion of a statute may not plead the invalidity of another portion of the same statute not applicable to his case, where the invalidity of the portion questioned will not render void the entire act or at least some provision that does affect him adversely; but conversely he may do so where the invalidity of the portion in question would render the entire act or some provision effecting him, void."

And this is the situation in our case. The part of the statute that attempts to describe what is and what is not the practice of architecture is not only vague but disjunctive and in the alternative so as to render the entire chapter void. Elaboration on this score, is reserved for the main brief.

ANSWER TO STATE'S ARGUMENT NUMBER II

Before meeting this argument, the following background is given:

In the state courts the appellant took the position that Chapter 81 was not unconstitutional; that section 9 exempted the appellant, a licensed engineer wholly, from the entire "chapter" per force of statutory definition of the word "chapter" (chapter 10—sec. 22)—(page 8 of the jurisdictional statement). The state said,

"No, the statute does not mean what it says." The courts went along with this view and it is only after it is construed contrary to its expressed terms that the appellant now says the unconstitutionality of the statute arises. The real issue then is that the appellant contends that the statute as written is constitutional and proper but when rewritten, under guise of construing it, is is rendered unconstitutional in its application to this appellant.

> "... Where a state s atute is so construed as to render it open to the objection of repugnancy to the federal constitution, there is presented a federal question authorizing a review."

Mobile Jackson vs. Miss. 210 US 187

The state says that the legislature did not exempt engineers from Chapter 81. The appellant says that the legislature well recognized the constitutional dangers of not exempting licensed engineers from the entire chapter. The only qualification was, under the statute, that the particular licensed engineer be one who "did architectual work incidental to his engineering." This would be recognizing that there are many kinds of licensed engineers, such as chemical engineers, who would not be doing architectual work.

Consequently, they would not be exempt under this statute. Only those who did architectual work incidental to their engineering would be exempt. It is only when the state and the court indulged in the apprehension that the legislature had made mistakes in drafting the act, did the appellant's rights become affected and constitutional problems arose. The appellant says that had his view been adopted, licensed engineers who do architectural work incidental to their engineering, would be wholly exempt from the statute. Other engineers not so engaged, would not be, for obvious reasons.

Therefore, it is the state court's decision construing the statute contrary to its plain and constitutionally proper terms that gives rise to the constitutional problems contained in the questions presented.

The state statute, the state court and the counsel for the state all agree that the appellant may practice architecture incidental to his engineering. This is is a legislative and judicial admission that the appellant is qualified. If he is qualified then saying so could not endanger the public safety, health or welfare. The state insists that the appellant may practice architecture but he may not say so or advertise the same.

The restraint against advertising what you are qualified and permitted to do seems not only to violate the first amendment of the Federal Constitution but additionally is an unwarranted interference with a man's means of earning a livelihood. Advertising is an essential and inseparable part of earning a livelihood in our complex society. Its restrictions should not be indulged in without compelling reason—, much less the tenuous and unsubstantiated apprehensions of the state in this case.

This court has frequently held similar restraints to be unconstitutional abridgements of rights of freedom of speech.

> "The fact that accused could not complain of deprivation of any rights but his own did not preclude him from attacking statute forbidding loitering and picketing with which he was charged with having violated, on ground that the statute was an unconstitutional abridgement of right of freedom of speech."

16 CJS 84 sec. 19

Thornhill vs. State of Alabama 310 US 38

The state also argues that the Supreme Court of the United States has recognized the distinction between those "who act for hire and those who do not." It is respectfully submitted that employees are paid and if they are assigned work of doing architectual design and construction, they are being paid for doing architectual designing and construction. In the final analysis then the supposed basis for differentiation of "those who act for hire and those who do not," vanishes in the light of common sense.

And lastly on this point of argument, the state admits that the appellant may practice architecture incidental to his engineering but he can't say so; he can't advertise the fact by the use of a sign using the word "Architect." It is submitted that this restraint is more likely to protect the income of the registered architects than the general safety, health or welfare of the public.

ANSWER TO STATE'S ARGUMENT NUMBER III

We agree with the rule as stated but point out that it lacks an important recognized qualification.

> "... Where a state statute is so construed as to render it open to the objection of repugnancy to the federal constitution, there is presented a federal question authorizing a review."
>
> **Mobile Jackson vs. Miss. 210 US 1**

> "The Supreme Court of the United States exercises independent judgment in determining whether the statute as construed and applied, violates the federal constitution,"
>
> **Hanover Fire Ins. vs. Carr 272 US 494**

And we infer from the state's argument on this point that it answers in the affirmative, number 3, 4, and 5 of the questions presented.

ANSWER TO STATE'S ARGUMENT NUMBER IV

The state seems to misunderstand the appellant's view on the sixth question presented. The appellant does not complain that "a prejudicial advantage" has been obtained merely. Prejudicial advantages may not encroach on constitutional rights. The appellant here says that his right to due process under the constitution has been infringed.

By way of preface, we submit the following excerpts, in table form, of chapters 81 and 83.

	C. 81 Sec. 8	C. 83 Sec. 2 Sub Sec. II
The Statute defines	Architecture	Engineering
1. Consultation	x	x
2. Investigation	x	x
3. Preliminary studies	x	x
4. Plans	x	x
5. Specification	x	x
6. Contract Document	x	o
7. Aesthetics	x	o
8. Structural Designs	x	x
9. Supervision of Construction	x	x
10. Evaluation	o	x

The state court, in its decision, confirms the only statutory difference between functions of architects and engineers as "...a coordination of structural factors concerning the aesthetic. That element is absent in the engineering law." (bottom of page 17 of jurisdictional statement).

The statute having defined the function of each profession, the state court should not have attempted to rewrite them, much less accept, under guise of "source materials" evidenciary matter which the state now says of it in its argument, the "weight to be given them would appear to be matters within the sound discretion of the

state court." We assume this means evidenciary weight. That means evidence. This evidence was offered and admitted in the appellate court, the appellant not then being present nor required to be; thus having no opportunity to be confronted and to cross-examine, depriving him of his right to due process.

The court, taking advantage of this legal trampoline soars on to say, "Architects are commonly engaged to project and supervise the erection of costly residences, schools... Basic engineering no longer suffices to satisfy the many demands of American health, wealth or prosperity." There is not an iota of evidence in the record to sustain such findings of fact, other than the "source material" which we have seen was evidence in disguise.

Had evidence been offered in the trial court, the respondent could have shown that engineers in Maine are not excluded from the types of projects which the state court inferentially reserved for architects only. And it would have shown that designing of such structures comprises of ninety percent engineering, the remaining ten percent of human effort being the application of aesthetics, or art. The latter depends upon the artistic talent of the engineer, be he called an engineer or an architect. In other words the architect is nothing but an artistic engineer. Or at least so the evidence would have tended to show. In the posture of things, the state takes the view that these moot matters may be decided by an appellate tribunal through source material because they contain "responsible opinions."

The state persists that "... The legislature could reasonably have adopted as a basis for its licensing statute," the substance of the source material, as part of its argument. The fact is, that the state did not adopt any part of such materials because the statute contains no remote reference, to such views. The views it did adopt and enacted into the statute, on this subject, are contained in the table in this brief on page 6.

We must also consider that this is a criminal case. If evidence of this sort is to be introduced not before the trial tribunal but in the appellate courts, in the future, it is submitted that approval of that kind of procedure by the Supreme Court of the United States in this case, will make all source materials in the future, "responsible" by virtue of mere submission in that prejudicial manner. The state says that such procedure does not pose a threat to fundamental freedom. The appellant says that it does. It is not the particular mischief that is done in an individual case that determines unconstitutional infringement but rather the harm or mischief that could be done under the particular law or procedure. This would seem to pose a substantial federal question.

ANSWER TO STATE'S ARGUMENT NUMBER V

The state prefaces this argument with an excerpt from the state court's decision and then buttresses it with the observation that the statute does not unconstitutionally discriminate against professional engineers because, the state says, the law is "designed to prevent fraud and financial loss to individuals from dealings with incompetent persons. . . ." This is followed by the argument that the legislature of Maine concluded that there were "significant differences" between the two professions.

The only significant difference that both the legislature and the state court recognized, in its decision, is "aesthetics." (see table on page 6.) Aesthetics is art. If it is suggested that there are some other differences the state court provided them: the legislature did not.

There is nothing in the statute nor the decision of the state court or even in the present argument of the state suggesting a factual basis for the apprehension that a licensed engineer, already qualified and permitted under the law to practice architecture, even though incidential to his engineering, could practice fraud and

produce financial loss to individuals if he used the title Architect. Nor, indeed, in common sense.

Which is to say, that if the engineer is qualified to practice architecture, he cannot possibly fraudulently mislead those who hire him, to their financial loss by his holding himself out as that, which the state, the court and everyone else admits he is qualified to do.

The last part of the state's argument under this heading cites three cases. The appellant says they have no application to our case, are not in point; the issues raised in those cases not being the issues here.

The case of Herron vs. the City of Denver, 283, P 2d 647, (1955) came up to the Appellate Court of that state for the purpose of construing the Denver Building Code which specifically enumerated various types of structures that architects were authorized to design and supervise the construction of and also specifically enumerated similar areas to which the engineer was to be confined. Of this that court said, "This makes a clear distinction between the types of buildings (each may design and supervise) and the Denver code does not in any way overlap in this regard."

In our case the statute has no such delineation. Not only is there a complete overlapping but, in addition each, architects and engineers, are declared to be competent in each other's field. Obviously then, the issues are entirely different.

In State vs. Babcock 73 NW 2nd 521 (1955) the statute was attacked on the grounds that the definition of the practice of architecture was vague and that there was a delegation of legislative authority. The definition of an architect was stated by the Michigan statute to mean:

> "...a person, who, by reason of his knowledge of mathematics and physical sciences and the principles of architectual design, acquired by professional education and practical experience

> is qualified to engage in architectual practice as hereinafter defined . . . The practice of architecture . . . includes any professional service such as consultation, investigation, evaluation, planning, design or responsible supervision of construction . . . in connection with any public or private structures, buildings, equipment, works or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved . . . (Emphasis supplied).

We observe that there is no reference to aesthetics. That legislature did not attempt to control art. Furthermore, that statute does not assume that all architectual work necessarily involves public welfare and so it qualifies the premise: if a person designs and/or supervises the construction of a structure and it can be shown that the public welfare is affected, then that person would be violating the statute. However, if it cannot be demonstrated to affect the public welfare or safety then the respondent would not be in violation of the Michigan statute. For instance, if he designed and supervised the construction of a henhouse or doghouse, however large and elaborate, he would not be in violation of the code. In the State of Maine, however, it is not what you design and supervise that matters but it is the mere fact that you have anything to do with designing or supervising construction and the state assumes that no matter what the structure, even a henhouse or doghouse, that public health or welfare is affected, without proof of it.

In the Goldschlag vs. Deegan case, a licensed engineer sought injunctive relief and a writ of mandamus to compel the official in charge of receiving plans for public construction, to receive his plans and specifications for a proposed structure. They were rejected perforce of a statutory provision that only the plans and specifications of architects were to be received for such purposes. He contended, before the New York Court, that the act was discriminatory against engi-

neers. The state court denied relief and the United States Supreme Court denied certiorari.

This case is easily distinguished from ours. What the court held, in that case, in common sense terms, is that anyone, a municipality or state, has the right to insist upon an architect rather than an engineer for proposed work without infringing on anyone's constitutional rights. If the preferance is for an artist to do the work, others cannot complain, not being artists, that they should be hired, too. Also, in the Goldschlag case, it was not an accepted premise that the engineer was either qualified or, under that statute, was permitted to practice architecture, as in our case. We submit that this case, in its facts, or the issues tried, is not in point.

This is particularly true when we consider that in a case seeking injunctive relief of mandamus there is a tremendous burden of proof and of going forward with the evidence imposed upon the plaintiff. In our case, a criminal case, the state has the burden of proof and a large one which must be met in full if the constitutional rights of this appellant are to be protected.

It is respectfully suggested that the State's Motion to Dismiss should be denied and the case be retained for full argument on its merits.

Respectfully submitted.

JEROME G. DAVIAU

A. RAYMOND ROGERS

50 Main Street

Waterville, Maine

Attorneys for Appellant